

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

CRP.No. 1031 of 2004(B)

AGAINST THE ORDER DATED 22/06/2004 IN EP 67/02 IN
OS.90/1982 of MUNSIFF COURT,CHENGANNUR
.....

REVN. PETITIONERS:

-
1. OOMMEN CHACKO, S/O.CHACKO,
ELANGATHIL VADAKKEPURA, ERATHU MURI,
VENMONY VILLAGE, MAVELIKKARA TALUK,
ALAPPUZHA DISTRICT.
 2. GEEVARGHESE JOHN, ELANGATHIL PUTHEN
VEETIL, ERATHU MURI, VENMONY VILLAGE,
MAVELIKKARA TALUK, ALAPPUZHA DISTRICT.
 3. THOMAS KOZHY, ALUMMOOTIL HOUSE,
ERATHU MURI, VENMONY VILLAGE,
MAVELIKKARA TALUK, ALAPPUZHA DISTRICT.

BY ADV. DR.P.S.KRISHNA PILLAI

RESPONDENTS: DECREE HOLDER

M.ABRAHAM, S/O.IYPE IDICULLA,
MADAPPILETHU THEKKETHIL, ERATHU MURI,
VENMONY VILLAGE, MAVELIKKARA TALUK,
ALAPPUZHA DISTRICT.

BY ADV. SRI.KOSHY GEORGE

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 13/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

CRP.No. 1031 of 2004(B)

ORDER ON I.A.NO.2368/2004 IN C.R.P.NO.1031/2004

DISMISSED.

13.7.2007

SD/- PIUS C. KURIAKOSE, JUDGE.

// TRUE COPY//

P.A. TO JUDGE.

PIUS C. KURIAKOSE, J.

C.R.P. No. 1031 OF 2004

Dated this the 13th day of July, 2007

JUDGMENT

Judgment Debtors 2 to 4 in a decree for permanent prohibitory injunction against construction of any 'new' road or path way, challenge in this Civil Revision Petition the order of the execution court finding that they have violated the decree as directed by the 8th judgment debtor, Mrs.Saramma Koshi and ordering attachment of their properties on the basis of such finding.

2. The learned Munsiff found on the basis of the evidence which was adduced by the parties in the enquiry consisting of Exts.A1 to A3, C1 to C3 and oral evidence of DHW1 and DHW2 on the side of the respondent decree holder and the counter oral evidence of JDW1 that the judgment debtors 2, 3, 4 and 8 are guilty of violation of the decree. The bone of contention is the width of a pathway. The case of the decree holder is that the width was only 2 feet and that the path way was just a nadathara. It was in respect of that nadathara, that the decree was passed. The allegation is that on 10.06.02 the judgment debtors trespassed into the property, destroyed the plants situated on the northern as well as the southern sides of the nadathara and widened the same as a pathway with width ranging between 8 to 12 feet to a

length of 75 feet. The above allegation is found to be true by the learned Munsiff on the basis of the evidence. I do not find any infirmity about the above finding and much less any jurisdictional infirmity warranting interference by this Court under its revisional jurisdiction.

3. I have heard the submissions of Dr.P.S.Krishna Pillai, counsel for the petitioners and those of Sri.Koshy George, counsel for the respondent. Sri.P.S.Krishna Pillai would submit that the very execution petition was not maintainable in the sense that it does not contain even an allegation that a 'new' pathway has been constructed by the judgment debtors in violation of the decree. The decree only restrains construction of any new pathway and not the widening of an existing pathway. Even if the allegation in the execution petition is accepted on its face value then also it cannot be said that the decree is violated. I shall immediately state that the above submission of the learned counsel is too technical to receive acceptance. When a 2 feet wide nadathara is widened as a pathway having width ranging between 8 to 12 feet by utilizing lands situated on its sides, the process of widening actually involves construction of two new nadatharas adjacent to the existing nadathara on its sides.

4. Dr.Krishna Pillai had another argument that the decree stood eclipsed at the time when the alleged violation took place, since

appeals were pending. The argument is based on certain observations of the Supreme Court in **Union of India v. West Coast Paper Mills Ltd.**(AIR 2004 SC 1596). Concededly the request for stay of operation of the decree was declined by the court of appeal. Even otherwise it is clear on a reading of Rule 5 of Order XLI itself, that filing of an appeal by itself will not operate as a stay of proceedings under the decree. In as much as the decree had not been stayed by the appellate court the same was operative. The judgment of the Supreme Court was rendered on entirely different facts.

But one submission of Dr.Krishna Pillai has some appeal. The 8th judgment debtor who is also found liable under the impugned order according to Dr.Pillai is an old lady who is totally blind and could not have personally directed the other judgment debtors namely judgment debtors 2, 3 and 4 to violate the decree in the manner presently found to be violated. Dr.Pillai's submission that the 8th judgment debtor is totally blind and that there is no convincing evidence regarding her involvement in the violation was not seriously disputed before me. I therefore vacate the finding of the learned Munsiff that the 8th judgment debtor is also guilty of violation of the decree. The impugned order will stand confirmed except to the extent it pertains to 8th judgment debtor and the CRP will stand dismissed as against the three petitioners.

However, considering Dr.Krishna Pillai's submission that second appeals preferred by the petitioners against the decree of the lower appellate court is coming up for admission and that the width of the pathway itself is the vital issue in the second appeal, even as I confirm the impugned order there will be a direction to the execution court that no steps in furtherance to the impugned order will be taken for another period of four months from today. However, unless the appellate decree is stayed by this court in its second appellate jurisdiction, the impugned order will become operative after the aforementioned period of four months.

PIUS C. KURIAKOSE, JUDGE

btt

